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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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10 LESLIE COLONNA,

11 Plaintiff,

12 v.

13 NANCY A. BERRYHILL,
14 Acting Commissioner of the
Social Security Administration,

15 Defendant.
16

CASE NO. 2:17-cv-00160 JCC JRC

REPORT AND
RECOMMENDATION ON
PLAINTIFF'S COMPLAINT

NOTING DATE: October 11, 2017

17 This matter has been referred to United States Magistrate Judge J. Richard
18 Creatura pursuant to 28 U.S.C. § 636(b)(1) and Local Magistrate Judge Rule MJR
19 4(a)(4), and as authorized by *Mathews, Secretary of H.E.W. v. Weber*, 423 U.S. 261,
20 271-72 (1976). This matter has been fully briefed. *See* Dkt. 12, 16, 17.

21 After considering and reviewing the record, the Court concludes that this matter
22 should be affirmed. For example, although plaintiff contends that the ALJ erred when
23 evaluating the medical evidence, the ALJ's findings were based on substantial evidence
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1 as a whole. Additional discussion by the ALJ regarding plaintiff's medical records also
2 demonstrate many normal findings. Similarly, although plaintiff contends that the ALJ
3 erred by failing to credit fully plaintiff's allegations and testimony, in part, the ALJ relied
4 on a finding of an inconsistency between plaintiff's allegations and the treatment records,
5 a finding also based on substantial evidence in the record.

6 Therefore, this matter should be affirmed pursuant to sentence four of 42 U.S.C. §
7 405(g).
8

9 BACKGROUND

10 Plaintiff, LESLIE COLONNA, was born in 1961 and was 52 years old on the
11 alleged date of disability onset of June 1, 2012 (*see* AR. 237-42). Plaintiff has his GED
12 and completed some automotive classes at a community college (AR. 78). Plaintiff
13 spent four years in the military as a mechanic, (*id.*), worked in seafood processing (AR.
14 74-75), and as a parts specialist in an auto parts store (AR. 69-73). He left the parts store
15 when he felt like it just got to be too much (*id.*).

16 According to the ALJ, plaintiff has at least the severe impairments of
17 "degenerative disk disease of the lumbar spine, affective disorder, anxiety disorder, and
18 personality disorder (20 CFR 404.1520(c) and 416.920(c))" (AR. 15).

19 At the time of the hearing, plaintiff was living alone in an apartment (AR. 68).
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On December 12, 2016, the Appeals Council denied plaintiff's request for review, making the written decision by the ALJ the final agency decision subject to judicial review (AR. 1-6). *See* 20 C.F.R. § 404.981. Plaintiff filed a complaint in this Court seeking judicial review of the ALJ's written decision in February, 2017. *See* Dkt. 4. Defendant filed the sealed administrative record regarding this matter ("AR.") on April 14, 2017. *See* Dkt. 10.

REPORT AND RECOMMENDATION ON
PLAINTIFF'S COMPLAINT - 3

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DISCUSSION

(1) **Did the ALJ err in her weighing of the opinion evidence from two examining psychologists and plaintiff's mental health counselor?**

(1) Did the ALJ err in her weighing of the opinion evidence from two examining psychologists and plaintiff's mental health counselor?

When an opinion from an examining or treating doctor is contradicted by other medical opinions, the treating or examining doctor’s opinion can be rejected only “for specific and legitimate reasons that are supported by substantial evidence in the record.” *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996) (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)); *see also* 20 C.F.R. §§ 404.1527(a)(2) (“Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature

1 and severity of your impairment(s), including your symptoms, diagnosis and prognosis,
2 what you can still do despite impairment(s), and your physical or mental restrictions”).

3 Plaintiff contends that because the “record contains no contradictory opinions
4 from a treating or examining source, [] the ALJ could only reject these opinions for ‘clear
5 and convincing’ reasons.” Dkt. 12, p. 3 (citing generally, *Ghanim v. Coleman*, 763 F.3d
6 1154, 1160-61 (9th Cir. 2014) (“to reject an uncontradicted opinion from a treating
7 physician, the ALJ must provide ‘clear and convincing reasons that are supported by
8 substantial evidence’”); *Widmark v. Barnhart*, 454 F.3d 1063, 1067 (9th Cir. 2006)
9 (“discussing the standard of review for examining physicians”)). Defendant argues that
10 because the opinions of Dr. Czysz and Dr. Mitchell are contrary to the medical opinion of
11 non-examining doctor, Dr. Regets, “only specific and legitimate reasons based on
12 substantial evidence in the record are need[ed] to reject their contrary opinions.” Dkt. 16,
13 p. 15 n.2 (citing as a comparison, AR. 136-149, with 367-372, 481-518) (other citation
14 omitted). Plaintiff does not cite authority for the proposition that an opinion from a non-
15 examining source is insufficient to render a contrary medical opinion “contradicted.” *See*
16 Dkt. 12, p. 3 (citing generally, *Ghanim*, 763 F.3d at 1160-61 (“to reject an uncontradicted
17 opinion from a treating physician, the ALJ must provide ‘clear and convincing reasons
18 that are supported by substantial evidence’”); *Widmark*, 454 F.3d at 1067 (“discussing the
19 standard of review for examining physicians”)). Instead, plaintiff cites cases regarding
20 the standard for medical opinions that are uncontradicted, and regarding that examining
21 physicians’ opinions generally are afforded more weight than the opinions of doctors who
22 provide opinions based solely on the record and not on examination. *See id.* Defendant’s
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1 contention that the contrary opinion of (non-examining doctor) Dr. Regets renders the
2 opinions from (examining doctors) Dr. Czysz and Dr. Mitchell “contradicted” is
3 persuasive in light of Ninth Circuit case law. *See, e.g., Ryan v. Commissioner*, 528 F.3d
4 1194, 1198 (9th Cir. 2008). Therefore, the opinions from Dr. Czysz and Dr. Mitchell can
5 be rejected “for specific and legitimate reasons that are supported by substantial evidence
6 in the record.” *Lester*, 81 F.3d at 830-31 (citing *Andrews*, 53 F.3d at 1043; *Murray*, 722
7 F.2d at 502.

8 The ALJ discussed the medical opinion of examining psychologist, Dr. Czysz,
9 noting that she opined that “the claimant had mild or no limitations in his ability to persist
10 in simple instructions had moderate limitations in his abilities to plan
11 independently, to ask simple questions, to be aware of normal hazards, to make simple
12 decisions, to perform routine tasks, or to learn new tasks [and] had marked to
13 severe limitations in his abilities to maintain appropriate behavior, to complete a normal
14 work [day/week], to perform effectively in a work setting, to adapt to a routine work
15 setting, or to maintain regular attendance.” AR. 20-21 (citing AR. 367-72).

17 The ALJ gave minimal weight to the opinions from Dr. Czysz for numerous
18 reasons. *See* AR. 21. For example, the ALJ found that plaintiff’s “treatment records
19 document minimal psychological complaints even with his recent discontinuance of
20 psychiatric medication [and that] Dr. Czysz’s assessment is otherwise
21 inconsistent with the claimant’s activities, treatment records, and overall examination
22 findings.” *Id.* The ALJ indicated that she gave greater weight to other psychological
23 assessments based on this evidence, which she noted was “summarized in the prior
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1 discussion of the ‘paragraph B’ criteria.” *Id.* This finding that Dr. Czysz’s assessment is
2 inconsistent with the evidence summarized by the ALJ is based on substantial evidence in
3 the record as a whole.

4 When discussing the paragraph B criteria, the ALJ included the following
5 discussion:

6 In activities of daily living, the claimant has mild restriction. During a
7 psychological evaluation in October 2013, the claimant displayed fair
8 hygiene and reported being independent in his activities of daily living.
9 In a function report from January 2014, the claimant denied having
10 problems performing his personal care. He stated he left his residence
several times per week for appointments, and that he was managing his
own finances.

11 In social functioning, the claimant has no more than moderate
12 difficulties. During treatment appointments since his alleged onset date,
13 the claimant has consistently displayed normal mood, normal affect,
14 normal behavior, and normal judgment. During medical care since his
15 alleged onset date, his review of symptoms have been consistently
16 negative for dysphoric mood. He has repeatedly reported having a good
17 mood. In September 2012, the claimant reported that his daily activities
18 include volunteering with the church. During a psychological evaluation
19 in September 2013, the claimant reported that his daily activities
20 included visiting friends. In his function report from January 2014, the
claimant reported using public transportation as his primary means of
travel. During the hearing, the claimant reported that he had been
working as a full-time sales representative for an automotive parts store
between April 2014 and September 2014. He declared that “if it wasn’t
for stocking batteries I would still be there probably.” He testified that he
had been performing cashiering during this work in 2014 in that he had
good interactions with customers.

21 AR. 16 (internal citations omitted).

22 The ALJ’s finding when failing to credit fully Dr. Czysz’s opinion that plaintiff’s
23 “treatment records document minimal psychological complaints even with his recent
24 discontinuance of psychiatric medication” is based on substantial evidence as a whole.

1 *See* AR. 21. For example, as noted by ALJ, on July 12, 2012, approximately a month and
2 a half after plaintiff's alleged date of disability onset of June 1, 2012, plaintiff's treatment
3 record indicates that he had normal mood and affect, and his behavior was normal, as was
4 his judgment (AR. 472); on November 6, 2012, plaintiff's treatment record indicates that
5 he had normal mood and affect (AR. 461); on February 26, 2013, plaintiff's treatment
6 record indicates that he had normal mood and affect, as well as "thought content normal"
7 (AR. 455); on April 9, 2013, plaintiff's treatment record indicates that he had normal
8 mood and thought content (AR. 381); on May 1, 2013, plaintiff's treatment record
9 indicates that he had normal mood and affect (AR. 450); on October 16, 2013, plaintiff's
10 treatment record indicates that he had normal mood and affect (AR. 547); on January 13,
11 2014, plaintiff's treatment record indicates that his psychiatric presentation was
12 "appropriate" (AR. 584); on June 3, 2014, plaintiff's treatment record indicates that he
13 had normal mood and affect, and also indicates specifically that plaintiff "is not
14 nervous/anxious" and that his exam was "negative for sleep disturbance and dysphoric
15 mood" (AR. 614); on October 28, 2014, plaintiff's treatment record indicates that he had
16 normal mood and affect (AR. 603).

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18 Similarly, also as noted by ALJ, on July 18, 2012, when being evaluated by Dr.
19 Czysz, Dr. Czysz opined that plaintiff's memory and concentration were within normal
20 limits, although he displayed impaired thought process. *See* AR. 370-71. On September
21 21, 2012, while being assessed at intake for mental health care, plaintiff's mental status
22 examination ("MSE") indicated that his affect was appropriate; his attitude was pleasant
23 and cooperative; he demonstrated good eye contact; his psychomotor activity was within
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1 normal limits; his speech had a normal rate and rhythm; his contemporaneous thought
2 process now was logical and connected (in contrast with the contrary opinion from Dr.
3 Czysz from approximately two months prior); his thought content was appropriate; his
4 orientation was full; his immediate, recent and remote memory all were intact; and his
5 judgment and insight both were good. AR. 434-35. Regarding his cognitive functioning,
6 he was assessed as “No Impairments Noted.” AR. 436. All of these intact and “normal”
7 assessments of functioning were indicated even though plaintiff’s mood was anxious and
8 depressed. *See* AR. 434. At this time, regarding social interactions, plaintiff reported
9 “going to the library and going to church and volunteering w[ith] [the] church.” AR. 430.
10 Regarding being able to use community resources or participate in leisure activities; and
11 to keep appointments, perform chores, avoid common dangers, and avoid victimization,
12 plaintiff reported “doing ok in these areas.” AR. 431.

14 In September, 2013, plaintiff’s thought process and content again both were within
15 normal limits, as was his concentration. *See* AR. 485. He reported that he was able to
16 complete his activities of daily living without assistance. AR. 482. By September 15,
17 2014, plaintiff’s discharge summary includes the following: “Client’s mood is stable and
18 balanced, he is employed full-time, he is meaningfully engaged with his music, in
19 relationships, and in volunteering at the food bank and his church. Major depressive
20 disorder, recurrent, is currently in remission.” AR. 562.

22 It is not the job of the court to reweigh the evidence: If the evidence “is susceptible
23 to more than one rational interpretation,” including one that supports the decision of the
24 Commissioner, the Commissioner's conclusion “must be upheld.” *Thomas v. Barnhart*,

1 278 F.3d 947, 954 (9th Cir. 2002) (citing *Morgan, supra*, 169 F.3d at 599, 601). The ALJ
2 can accomplish providing specific and legitimate reasons based on substantial evidence
3 in the record as a whole by “setting out a detailed and thorough summary of the facts and
4 conflicting clinical evidence, stating h[er] interpretation thereof, and making findings.”
5 *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881
6 F.2d 747, 751 (9th Cir. 1989)). That is what the ALJ did here.

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8 Although plaintiff contends that “the ALJ contrasted the opinions of Dr. Czysz
9 and Dr. Mitchell with plaintiff’s discontinuing medications,” which was approximately 2
10 years after the evaluation by Dr. Czysz, plaintiff fails to acknowledge that the ALJ also
11 cited much evidence from a period of time before that, including, as already noted,
12 evidence from approximately 2 months after this evaluation by Dr. Czysz. *See* AR. 16.
13 The Court concludes that the ALJ’s relatively detailed and thorough summary of the facts
14 and conflicting clinical evidence, along with the ALJ’s interpretation thereof and the
15 ALJ’s findings, entails specific and legitimate reasons based on substantial evidence in
16 the record as a whole for the failure to credit fully the medical opinions of Dr. Czysz.

17 The ALJ also discussed the medical opinion from the examining psychologist, Dr.
18 Mitchell, noting that “Dr. Mitchell opined that the claimant had moderate limitations in
19 his ability to ask simple questions, to be aware of normal hazards, to make simple
20 decisions, to perform routine tasks, to learn new tasks, or to persist with simple
21 instructions [and] had marked to severe limitations in his abilities to plan
22 independently, to maintain appropriate behavior, to complete a normal work [day/week],
23 to perform effectively in a work setting, to adapt to a routine work setting, [and] to
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1 maintain regular attendance.” *See* AR. 21 (citation omitted). The ALJ gave minimal
2 weight to Dr. Mitchell’s assessment, for the same rationale as provided for giving
3 minimal weight to Dr Czysz’s opinion. *Id.*

4 Plaintiff contends that the ALJ erred by using “boilerplate” and by using copy and
5 paste. *See* Dkt. 12, p. 6 (citing *Belanger v. Berryhill*, 2017 WL 1164401 (9th Cir. March
6 29, 2017)). Plaintiff contends that when “offering only boilerplate language, the ALJ
7 made only general assertions without referring to any specific evidence contradicting
8 these opinions.” *Id.* However, as the Court quoted previously, the ALJ specified which
9 evidence is inconsistent with these doctors’ opinions, noting that some of this evidence
10 was “summarized in the prior discussion of the ‘paragraph B’ criteria.” *See* AR. 21. This
11 summary by the ALJ already has been quoted and summarized extensively by the Court
12 above, *see supra*, with respect to the ALJ’s determination regarding Dr. Czysz’s opinion.
13 Based on this evidence already discussed above, the Court concludes that the finding by
14 the ALJ that “Dr. Mitchell’s assessment is otherwise inconsistent with the claimant’s
15 activities, treatment records and overall examination findings” is based on substantial
16 evidence in the record as a whole and entails a specific and legitimate reason for failing
17 to credit fully the medical opinion of Dr. Mitchell.
18

19 Plaintiff also argues that the ALJ failed to provide germane reasons for giving
20 minimal weight to the opinion of plaintiff’s mental health counselor. *See* Dkt. 12, pp. 9-
21 11. Defendant contends there is no error. *See* Dkt. 16, pp. 16-18.
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23 Pursuant to the relevant federal regulations, in addition to “acceptable medical
24 sources,” that is, sources “who can provide evidence to establish an impairment,” 20

1 C.F.R. § 404.1513 (a), there are “other sources,” such as friends and family members,
2 who are defined as “other non-medical sources” and “other sources” such as nurse
3 practitioners, therapists and chiropractors, who are considered other medical sources, *see*
4 20 C.F.R. § 404.1513 (d). *See also Turner v. Comm’r of Soc. Sec.*, 613 F.3d 1217, 1223-
5 24 (9th Cir. 2010) (citing 20 C.F.R. § 404.1513(a), (d)); Social Security Ruling “SSR”
6 06-3p, 2006 SSR LEXIS 5 at *4-*5, 2006 WL 2329939. An ALJ may disregard opinion
7 evidence provided by both types of “other sources,” characterized by the Ninth Circuit as
8 lay testimony, “if the ALJ ‘gives reasons germane to each witness for doing so.’” *Turner*,
9 *supra*, 613 F.3d at 1224 (quoting *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001)); *see*
10 *also Van Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996).

12 Ms. Ann Thompson, BS, submitted a letter describing plaintiff’s functioning in
13 June 2013. *See* AR. 559-60. As noted by plaintiff, Ms. Thompson believed that plaintiff
14 would not be able to maintain a regular work schedule without absences, tardiness or
15 extra breaks and would have difficulty maintaining concentration persistence and pace.
16 *See* Dkt. 12, p. 9 (citing AR. 559-60). Ms. Thompson also opined that plaintiff “was
17 unable to tolerate the stress of a normal work environment and was unable to routine[ly]
18 interact in an appropriate manner with coworkers or the public.” AR. 21 (citing AR. 559-
19 50).

20 The ALJ gave minimal weight to Ms. Thompson’s opinion, offering essentially
21 the same reasons as she did for the opinions of Dr. Czysz and Dr. Mitchell. *See id.* For
22 example, the ALJ found that plaintiff’s “treatment records document minimal
23 psychological complaints, even with his recent continuance of psychiatric medication . .
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1 . . [and that her] assessment is also incompatible with the claimant's recent full-time
2 work activities [and] with the claimant's activities, treatment records, and overall
3 examination findings." *Id.*

4 The ALJ's findings are based on substantial evidence in the record as a whole. For
5 example, Ms. Thompson's opinion that plaintiff would have difficulties with
6 concentration, persistence and pace, is inconsistent with the fact that on July 18, 2012,
7 when being evaluated by Dr. Czysz, Dr. Czysz opined that plaintiff's concentration was
8 within normal limits. *See* AR. 370-71. Her opinion also is inconsistent with the treatment
9 record demonstrating that on September 21, 2012, plaintiff's MSE indicated that
10 regarding his cognitive functioning, he was assessed as "No Impairments Noted," AR.
11 436, and in September, 2013, plaintiff's thought process and content again both were
12 within normal limits, as was his concentration. *See* AR. 485.

14 Based on the record discussed above, the Court concludes that the ALJ offered
15 germane reasons for failing to credit fully the opinion of other medical source, Ms.
16 Thompson.

17 Finally, although plaintiff faults the ALJ for giving greater weight to the opinions
18 of reviewing psychologists over those of the examining psychologist, and although
19 greater weight generally is provided to opinions of those who examine a claimant, an
20 ALJ may reject the opinion from an examining psychologist in favor of the opinion from
21 a reviewing psychologist by providing specific and legitimate reasons based on
22 substantial evidence in the record as a whole for doing so. As the Court has already
23 concluded, this is what the ALJ did.
24

1 For the reasons discussed and based on the record as a whole, Court concludes that
2 the ALJ did not err when evaluating the medical evidence.

3 **(2) Did the ALJ err in her weighing of plaintiff's credibility regarding his**
4 **mental impairments?**

5 Plaintiff contends that the ALJ erred when failing to credit fully his allegations
6 and testimony. Defendant contends there is no harmful error in the evaluation of
7 plaintiff's allegations and testimony.

8
9 If an ALJ rejects the testimony of a claimant once an underlying impairment has
10 been established, the ALJ must support the rejection "by offering specific, clear and
11 convincing reasons for doing so." *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996)
12 (citing *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.1993)); *see also Burrell v. Colvin*,
13 775 F.3d 1133, 1137 (9th Cir. 2014) ("There is no conflict in the caselaw, and we reject
14 the government's argument that *Bunnell* excised the "clear and convincing"
15 requirement"); *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (citing *Bunnell v.*
16 *Sullivan, supra*, 947 F.2d at 343, 346-47). As with all of the findings by the ALJ, the
17 specific, clear and convincing reasons also must be supported by substantial evidence in
18 the record as a whole. 42 U.S.C. § 405(g); *see also Bayliss v. Barnhart*, 427 F.3d 1211,
19 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).
20

21 If the medical evidence in the record is not conclusive, sole responsibility for
22 resolving conflicting testimony and analyzing a claimant's testimony regarding
23 limitations lies with the ALJ. *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1999)
24

1 (citing *Waters v. Gardner*, 452 F.2d 855, 858 n.7 (9th Cir. 1971) (*Calhoun v. Bailar*, 626
2 F.2d 145, 150 (9th Cir. 1980)). An ALJ is not “required to believe every allegation of
3 disabling pain” or other non-exertional impairment. *Fair v. Bowen*, 885 F.2d 597, 603
4 (9th Cir. 1989) (citing 42 U.S.C. § 423(d)(5)(A) (other citations and footnote omitted)).
5 Even if a claimant “has an ailment reasonably expected to produce *some* pain; many
6 medical conditions produce pain not severe enough to preclude gainful employment.”
7 *Fair, supra*, 885 F.2d at 603. The ALJ may “draw inferences logically flowing from the
8 evidence.” *Sample, supra*, 694 F.2d at 642 (citing *Beane v. Richardson*, 457 F.2d 758
9 (9th Cir. 1972); *Wade v. Harris*, 509 F. Supp. 19, 20 (N.D. Cal. 1980)). However, an ALJ
10 may not speculate. *See* SSR 86-8, 1986 SSR LEXIS 15 at *22.
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12 The ALJ gave numerous reasons for failing to credit fully plaintiff’s allegations
13 and testimony. For example, the ALJ noted that an Administration of the Personality
14 Assessment Inventory during a state agency psychological evaluation in September 2013
15 “indicated that the claimant exaggerated his complaints and problems in an effort to make
16 an unfavorable impression.” AR. 19 (citing AR. 481-97). Plaintiff argues that the ALJ
17 mischaracterized the record in this finding. However, the record includes the following
18 from Melanie E. Mitchell, Psy.D, Clinical Psychologist, who conducted, among other
19 things, a personality profile of plaintiff:
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21 With respect to negative impression management, there are indications
22 that the respondent endorsed items that present an unfavorable
23 impression or represent particularly bizarre and unlikely symptoms. This
24 result raises the possibility of an element of exaggeration of complaints
and problems. Elevations in this range often indicate a “cry for help,” or
an extremely negative evaluation of oneself and one’s life. Although this
pattern does not necessarily indicate a level of distortion that would

1 render the test results un-interpretable, interpretive hypotheses presented
2 in this report should be reviewed with this tendency in mind.

3 (AR. 496).

4 Although it is true that an explicit finding of malingering sufficient to alter the
5 standard by which plaintiff's allegations and testimony are judged is not present here, it
6 nevertheless is appropriate for the ALJ to have considered the particular test results
7 regarding potential exaggeration. Based on the record as a whole, the Court concludes
8 that notation by the ALJ that an Administration of the Personality Assessment Inventory
9 during a state agency psychological evaluation in September 2013 "indicated that the
10 claimant exaggerated his complaints and problems in an effort to make an unfavorable
11 impression" is a finding based on substantial evidence in the record as a whole. AR. 19
12 (citing AR. 481-97). "Substantial evidence" is more than a scintilla, less than a
13 preponderance, and is such "relevant evidence as a reasonable mind might accept as
14 adequate to support a conclusion." *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir.
15 1989) (quoting *Davis v. Heckler*, 868 F.2d 323, 325-26 (9th Cir. 1989)).
16

17 The ALJ also noted that plaintiff's activities of daily living included "visiting
18 libraries and volunteering with the church." AR. 20 (citing AR. 430). These findings are
19 based on substantial evidence in the record as a whole, which includes plaintiff's report
20 that he was visiting libraries, going to church, and volunteering with the church. *See* AR.
21 430. When discussing plaintiff's allegations, the ALJ noted that plaintiff "reported having
22 anxiety when working around other people in his recent employment." AR. 18. The
23 ALJ's inference that plaintiff's reported anxiety working around other people is
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1 inconsistent with visiting libraries and going to church and volunteering with the church,
2 is a logical inference based on substantial evidence in the record as a whole. *See*
3 *Magallanes*, 881 F.2d at 750 (quoting *Davis*, 868 F.2d at 325-26) (“Substantial evidence”
4 is more than a scintilla, less than a preponderance, and is such ““relevant evidence as a
5 reasonable mind might accept as adequate to support a conclusion””).

6 The ALJ also discussed the treatment record and found that it did not demonstrate
7 any worsening of plaintiff’s back impairment or psychological impairments since his
8 prior administrative decision which was not appealed fully and which included a finding
9 that plaintiff was capable of work despite the effects of his spinal impairment and
10 psychological impairments. *See* AR. 12-13, 18-19.

12 The ALJ also found that plaintiff’s “examination findings otherwise indicate
13 minimal physical deficits as a result of his back impairment,” and that his psychological
14 “examination findings and treatment settings document generally normal psychological
15 signs, in contrast to his presentation when seeking state assistance.” AR. 18, 19. Both of
16 these findings are based on substantial evidence in the record as a whole. Although an
17 ALJ may not rely solely on a finding that allegations and testimony are not supported by
18 the objective medical evidence, here, as discussed already, the ALJ also relied on other
19 rationale when failing to credit fully plaintiff’s allegations and testimony.

20 When discussing plaintiff’s back impairment, the ALJ included the following
21 discussion:
22

23 During medical care in November 2012 - February 2013, [plaintiff]
24 repeatedly reported having no back pain During medical care in
 May 2013, the claimant reported having back pain since the recent

1 injury. He denied having weakness, numbness, or gait problems. He
2 exhibited slight tenderness in his spine. He was given pain medication
3 and was referred to physical therapy (“PT”). When attending PT two
4 weeks later, the claimant reported that he had been doing landscaping
5 work prior to his injury in 2013. During this PT, that claimant [reported]
6 “feeling pretty well” since his injury and “he has much less pain.” He
7 declared that he could stand and sit without increased back pain. He now
8 asked to be discharged from PT. At this time all this trunk movements
9 were pain-free. When visiting his primary care clinic in July 2013, the
10 claimant said his symptoms from the injury in April 2013 had abated and
11 that his back pain had returned to its prior state. . . . During medical
12 care in June 2014, he reported decreased lower back pain. He denied
13 having any current pain. He again displayed a lack of tenderness in his
14 back. During medical care in October 2014, he reported that he “feels
15 quite well” and had a completely unremarkable review of physical
16 symptoms.

17 AR. 18-19.

18 The Court already has discussed some of the psychological treatment
19 records reviewed by the ALJ, *see supra*, section 1. For example, the Court
20 concluded that the “ALJ’s finding when failing to credit fully Dr. Czysz’s
21 opinion that plaintiff’s ‘treatment records document minimal psychological
22 complaints even with his recent discontinuance of psychiatric medication’ is
23 based on substantial evidence as a whole.” *See supra*, section 1 (citing AR. 16,
24 21). When discussing plaintiff’s allegations and testimony, the ALJ included a
similarly thorough discussion of plaintiff’s psychological records, for example,
noting that in July 2012, plaintiff “reported having good mood [and] exhibited
normal mood, normal affect, normal behavior, and normal judgment.” AR. 19.
The ALJ also noted that in September 2012, plaintiff “now demonstrated good
grooming, normal speech, logical and connected thought process, pleasant and

1 cooperative behavior, good eye contact, normal psychological activity, good
2 judgment, appropriate thought content, intact memory, [and] no cognitive
3 impairment.” AR. 19 (internal citations omitted). The ALJ also noted that in
4 November 2012, plaintiff reported having a good mood and his review of
5 symptoms was otherwise negative for anxiety or dysphoric mood; and that in
6 February 2013, plaintiff reported “that he had self-discontinued his use of
7 psychiatric medications, and did not request any mental health care, [and] he
8 displayed normal mood, normal affect, [and] normal thought content.” *Id.*
9 (internal citations omitted).
10

11 Based on the ALJ’s discussion of plaintiff’s treatment records and based
12 on the record as a whole, the Court concludes that the ALJ’s implication that
13 plaintiff’s allegations and testimony are not consistent with the treatment records
14 is a finding based on substantial evidence in the record as a whole.

15 For all of the above stated reasons, and based on the record as a whole, the
16 Court concludes that the ALJ offered clear and convincing reasons based on
17 substantial evidence in the record as a whole for failing to credit fully plaintiff’s
18 allegations and testimony. The Court finds no harmful legal error.
19

20 CONCLUSION

21 Because the ALJ did not err when evaluating the medical evidence or plaintiff’s
22 allegations and testimony, the Court concludes that this matter should be affirmed.
23
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1 Based on these reasons, and the relevant record, the undersigned recommends that
2 this matter be **AFFIRMED** pursuant to sentence four of 42 U.S.C. § 405(g).

3 **JUDGMENT** should be for **defendant** and the case should be closed.

4 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
5 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R.
6 Civ. P. 6. Failure to file objections will result in a waiver of those objections for
7 purposes of de novo review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C).

8 Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the
9 matter for consideration on October 11, 2017, as noted in the caption.
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11 Dated this 26th day of September, 2017.

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15 J. Richard Creatura
16 United States Magistrate Judge
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